International Distribution Agreement

- You make and market a product and you want a reseller in other countries to sell it/them for you… use this sample contract.
- See also, “Sales Representative – Foreign” if you are doing business with just one person acting on your behalf.
- The first part of the Memorandum should be completed and distributed to the Distributor / Supplier along with a copy of the International Distribution Agreement.

Date: **[Date]**

To: **[Name of Distributor / Supplier]**

From: **[Owner/Founder]**

[Company]

Subject: **International Distribution Agreement**

Attached is a Distribution Agreement to identify all of the terms and conditions of our distribution arrangement.

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!

Click to Visit Web Page

From JIAN

NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- **Do Not Use This Agreement 'As-Is.'**
- **This Agreement Is Not Legal Advice.**
- **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

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We're building a network of iness experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.

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Things change, laws change, the world changes... new ideas come along all the time. When you register, you can access our website to get updates and changes... like new and improved spreadsheets and documents. They can be downloaded directly to your computer.

- Please visit our website under **Updates**.
- Remember to bookmark our website: **www.JIAN.com**

Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above ←→ green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the "[ ]" brackets – simply edit / type-over with your information.

To make sure your have filled in all the variables, use Word's 'FIND' function to locate any "[ ]" which may contain an unedited variable.

- Click the icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

[International] Distribution Agreement

This is a standard introductory paragraph that lists the parties to the Agreement and the date the Agreement is being entered into. You need to enter the date of the Agreement, the names of the parties, the type of organization and their addresses.

Effective Date	**[Date]**
between	**[Company Legal Name]**, ("[Company]")
a	[State] [Corporation / Partnership / Sole Proprietorship],
located at	[Address]
	[City], [State] [Zip Code]
and	**[Distributor]** ("Distributor"),
a	[Country] [Corporation / Partnership / Sole Proprietorship],
located at	[Company Address] [Country]

Summary

The following section is like an introduction. It states that [Company] is in the business of developing, marketing and supporting certain products and that since the Distributor has the ability to distribute those products, [Company] is willing to grant an exclusive Distributorship to the Distributor in the Territory.

[Company] is in the business of developing, marketing and supporting certain products (defined below).

The Distributor wishes to distribute to the dealers and remarketers these Products and assures [Company] that it has the facilities, personnel, and technical expertise necessary to market the Products in the Territory (defined below);

The Distributor wishes to obtain from [Company], and [Company] is willing to grant to the Distributor, an exclusive right to distribute these Products in the Territory.

In consideration for the mutual promises, covenants, and Agreements made below, the parties, intending to be legally bound, agree as follows:

1. Definitions

For purposes of this Agreement, the following terms will have the indicated definitions:

- **"Agreement"** This Agreement is by and between [Company] and the Distributor.
- **"Information"** The documentation, technical information and / or business information, either oral or written that [Company] or the Distributor furnishes to the other marked as proprietary or confidential or simply treated as such by the disclosing party. The Information includes research, development or business activities, including any unannounced products and services, as well as any information relating to services, developments, services, processes, plans, financial information, customer and Supplier lists, forecasts and projections. Information shall also include the terms of this Agreement. A party's information shall be deemed confidential under this Agreement unless the information: (1) is in

the public domain through no act of other party; (2) is lawfully known by the other party from a source other than the first party with no restriction of confidentiality; or (3) must be disclosed by requirement of law or generally accepted accounting principles.

- **"Term"** The duration of this Agreement as provided in Article 2.

Describe as fully as possible all of the products to be supplied to the Distributor. (For example, "the word processing software called WordProcessor, the spreadsheet software called Cell Maker, and the financial accounting software called Account Pro.") You may want to change the language in Section 1.4 if you do not want to include future versions of the product within the Agreement.

- **"Products"** The [Describe the products] developed or owned by [Company], along with all options to the products; all future versions of the products; and all enhancements, revisions, or modifications made to the products by [Company].
- **"Territory"** The specific geographic areas set forth in Exhibit A (attached to the end of this Agreement).
- **"End-User"** Any person or entity who obtains the product(s).
- **"Intellectual Property Rights"** The intangible legal rights or interests evidenced by or embodied in (1) any idea, design, concept, technique, invention, discovery, or improvement regardless of patentability, but including patents, patent applications, trade secrets and know-how; (2) any work of authorship, regardless of copyright-ability, but including copyrights and any moral rights recognized by law; and (3) any other similar rights, in each case on a worldwide basis.
- **"Quota"** Specified minimum quantities of the products as set forth in Exhibit B (attached to the end of this Agreement) consisting of an initial purchase order and a continual minimum monthly volume commitment.
- **"Trademarks"** The Trademarks specified in Exhibit C (attached to the end of this Agreement).

2. Term

In Section 2, you set the term of the distributorship. Note that you can always renew this or any other Agreement upon the mutual consent of the parties.

2.1 Term. This Agreement shall commence on the Effective Date and shall terminate [Month, Day, Year] following that Effective Date, unless it terminates sooner according to the provisions of this Agreement. The Parties may renew this Agreement in writing upon mutual Agreement.

There are certain clauses in this Agreement that you will want to continue (referred to as survive) the actual termination of the Agreement. For example, while the Agreement may terminate, warranties regarding the products would still be effective, depending on how you wrote the Agreement.

2.2 Continuation or Survival of Certain Sections. Certain sections, as indicated below, will survive and remain effective even after the termination of this Agreement. All other rights and obligations of each party to the other shall terminate upon the termination of this Agreement.

3. Relationship

The Distributor, (entered in the brackets), is appointed [Company]'s exclusive Distributor in the Territory. Since there are other Distributors, the Distributor is a non-exclusive Distributor; however, the Distributorship is exclusive within the territory.

3.1 [Distributor] as Non-Exclusive Distributor. Subject to the terms and conditions set forth in this Agreement, [Company] hereby appoints the Distributor as [Company]'s exclusive Distributor for the Products in the Territory, and the Distributor hereby accepts such appointment. [Company] shall abstain from direct sales of Products in the Territory except as provided in Section 4.2 and 4.3. Nothing herein shall prohibit [Company] from making second source Agreements providing rights to make, use and

commercially exploit products similar to the Products under other brand names. This appointment is subject to the limitations set forth in Section 4.

The following section gives fairly broad power to the Distributor regarding the distribution of the products. If you are [Company], you should carefully review it, making sure that you are comfortable giving the Distributor this much flexibility and power. Of course, it can be modified at either parties' option.

3.2 Powers as Distributor. The Distributor may incorporate, combine, integrate or modify the products; sell them either alone or in combination with other products; and sell them under its own label. No payment of any fee or charge is required as a condition of such appointment. No franchise is granted in this Agreement. Except as expressly provided in this Agreement, all aspects of the distribution and marketing of the products by the Distributor shall be in the Distributor's sole control, including without limitation the methods of marketing, pricing, naming, packaging, labeling, and advertising, and the terms and conditions of any sale, unless otherwise provided for in this Agreement.

This next section makes clear that neither [Company] nor the Distributor is authorized to act on the other's behalf and that each is an independent contractor acting on its own behalf. It is important for this to be stated since it might appear that one is an agent for the other, when, in fact, neither wants the other to be able to bind it to contracts or otherwise create legal liabilities.

3.3 Supplier & Distributor are Independent Contractors. [Company] and the Distributor agree that their relationship is that of the seller and the buyer (or the licenser and the licensee) and not that of joint venturers, principals or agents, or franchiser and franchisee. Both are independent contractors acting for their own accounts, and neither is authorized to make any commitment or representation, express or implied, on the other's behalf unless authorized to do so by the other in writing.

Section 3.4 says that while the Distributor may use [Company]'s trademarks and trade names, it has no legal right or interest in that property. Furthermore, [Company] may set forth specifics regarding their use in writing, and the Distributor must conform its use accordingly.

3.4 Use of Trademarks & Trade Names. No right, title or interest in or to any trademarks, trade names, slogans, labels and designs used by either [Company] or the Distributor, nor the goodwill connected, is conveyed by this Agreement. The Distributor may, in connection with the promotion and sale of the products pursuant to the terms of this Agreement, refer to [Company]'s applicable trade names or trademarks provided that all such references are in conformance with [Company]'s requirements regarding such use, as such requirements are communicated to the Distributor in writing from time to time by [Company].

3.5 Territorial Responsibility. The Distributor shall pursue vigorously sales policies and procedures to realize the maximum sales potential for the products in the Territory. The Distributor shall not advertise or solicit the sale of the products outside the Territory or establish a repair or maintenance facility outside the territory.

4. Distribution Rights

Section 4 establishes the Distributor's distribution rights. Note, that it permits [Company] to sell the products to certain parties under specific circumstances. While it may be important for [Company] to be able to sell its products, it is equally or more important that the Distributor be able to limit these sales. Otherwise, [Company] might circumvent the Distributor altogether, reducing the value of the Distributorship.

In recognition of the investment to be made by the Distributor in connection with its marketing and distribution of the products, the parties agree to each of the following provisions:

The following section details exactly what is meant by "non-exclusive" in this non-exclusive Distributorship Agreement.

4.1 Exclusivity

The Distributor is the only entity that will distribute the products in the Territory.

4.1.1 [Company] hereby grants the Distributor the exclusive right to distribute the Products in the Territory, subject to the limitations set forth below and in Section 4.1.2.

You should indicate to whom the Distributor may distribute the products. You may want to limit the distribution to certain types of businesses or users, or you may not want to limit the distribution at all.

4.1.2 The Distributor may resell or distribute the products to [x] (end-user customers / resellers / other) without restriction.

Assuming you have limited the Distributor's ability to distribute the products above, this section merely states that it cannot sell to those not authorized above.

4.1.3 The Distributor's obligations with respect to Section 4.1.2 shall be limited to refraining from intentionally selling to the customers other than the customers to whom it is authorized to sell.

Under certain circumstances, [Company] may sell the products. It is important for the Distributor to limit these exceptions or the value of its exclusive Distributorship will be diminished. In other words, if not properly stated, [Company] might pre-empt the Distributor from selling products altogether. On the other hand, it is also important for [Company] to retain these rights if he wants to be able to sell the products directly.

4.2 Reservation of Rights by Supplier. Despite the exclusive distribution rights granted to the Distributor pursuant to Section 4.1, [Company], in addition to the rights set forth in Section 3.1, reserves the following rights with respect to the sale of the Products:

[Company] can sell to any of the customers listed in Exhibit D (attached tot he end of this Agreement). [Company] should try to be as thorough as possible regarding the completion of that exhibit.

4.2.1 [Company] reserves the right to sell the products to its existing end-user customers as of the date of this Agreement, all the customers are identified in Exhibit D.

[Company] can also sell to other customers if the product is part of a system being sold to the customer. For example, if one of the products is a computer monitor and you are selling an entire computer system to a customer.

4.2.2 [Company] further reserves the right to sell products to other customers if such sales are part of an integrated sale with other systems.

Delete this section if [Company] won't be permitted to accept unsolicited orders.

4.2.3 Lastly, [Company] may accept and fulfill unsolicited orders received from the Territory.

In the following section, regarding the first insert, enter the commission, if any, to be paid by [Company] to the Distributor for any of the products sold by [Company]. If no commission is to be paid, you should say so. For the second insert, select the method by which the Distributor's obligations will be decreased. Assuming the Distributor is selling several products and the sales price of each is low, then you have probably set up a dollar minimum; here, therefore, you should select dollar-for-dollar. Where you are dealing with high ticket items, you have probably set up a minimum volume requirement; in that case, select the one-for-one option.

4.3 Sales by Supplier. [Company] shall pay the Distributor a commission on the sale of any products by [Company] pursuant to Section 4.2. Such commission shall be equal to [x]% of the end-user sales price for each product sold. In addition, any sales by [Company] pursuant to Section 4.2 shall be credited against the Distributor's obligation to purchase products in order to maintain its exclusive rights under this Agreement. Any such sales shall reduce any Distributor obligation to purchase products on a (one-for-one / dollar-for-dollar) basis.

The following section prohibits [Company] from selling products that are similar to the products defined in this Agreement. If [Company] will be able to sell such products, you should say so.

4.4 Other Products. [Company] shall not sell any products with specifications comparable to those of the products.

Section 5 describes the Distributor's specific responsibilities. Obviously, since each distribution arrangement is unique, you might want to add (or even delete) certain obligations that will be imposed on the Distributor.

5. Distributor's Responsibilities

During the term of this Agreement, the Distributor agrees to the following:

5.1 Distribution to Dealers. The Distributor may distribute the products to any dealers.

Section 5.2 requires the Distributor to maintain certain inventory levels based on the number of days anticipated (enter the number in the brackets). The quota is the absolute minimum time the Distributor has to order from [Company] each month.

5.2 Minimum Commitments. The Distributor shall maintain an inventory of products and warehousing facilities sufficient to adequately serve the demands of its dealers on a timely basis. Such inventory shall equal or exceed the quantity of products necessary to meet reasonably anticipated demands of the dealers for at least [xx] days. The Distributor shall in all cases order from [Company] at least the quota of each product each and every month.

Section 5.3 describes certain marketing requirements imposed on the Distributor. Basically, the Distributor has to use its best efforts to distribute the products.

5.3 Promotional Efforts. The Distributor shall use its best efforts to promote vigorously and aggressively the marketing and distribution of the products. The Distributor may advertise the products in advertising media of the Distributor's choice. The Distributor shall make full use of all promotional material supplied by [Company]. In all advertising and promotion of the products, the Distributor shall comply with [Company]'s standard cooperative advertising policies as specified from time to time.

The Distributor must use any packaging provided by [Company].

5.4 Supplier Packaging. The Distributor shall distribute products with all packaging, warranties, disclaimers, and End-User Agreements intact as shipped by [Company] and shall require all the Dealers to adhere to the terms of the End-User Agreements applicable to such products.

Section 5.5 sets forth the regular reports required of the Distributor. The first number is the number of days (in brackets) following the end of the month that the Reports are due. The second insert is the number of days following the termination of this Agreement that reports will be due.

5.5 Reports. The Distributor shall deliver to [Company] no later than [xx] days after the end of each month during the term of this Agreement and for (Enter number) days thereafter, a written report showing for the preceding month (1) the Distributor's current inventory of each product (listed in units); (2) the quantity of each product shipped into a zip code area; (3) the number of returns of or refunds on products granted; and (4) other relevant information for the prior month as requested from time to time by [Company]. The Distributor shall cooperate with [Company] to make the format, microcomputer environment, and coding of its monthly records compatible with [Company]'s record-keeping system.

Section 5.6 requires the Distributor to comply with all applicable laws.

5.6 Compliance with Laws. The Distributor shall comply with all material applicable present and future federal, state, county, local, and, where necessary, foreign laws, ordinances and regulations relating to the sale of the products.

If [Company] provides instructions for the products, the Distributor must provide those instructions to its customers.

5.7 Instruction of Customers. The Distributor shall supply its customers with those instructions for the installation and operation of the products that [Company] provides (or that the Distributor adapts from instructions provided by [Company]).

The Distributor must train and maintain a sales force to work with the products. You may want to reword this section, so that the language is appropriate to your products.

5.8 Training. The Distributor shall train a sufficient number of its sales personnel in connection with the demonstration, use and sale of the products in order to maintain a staff of competent sales personnel conversant in the specifications, features and advantages of those products. Such training of sales personnel shall include instruction as to the proper use of, and restrictions on the use of, information provided by [Company].

The Distributor is required to provide the customer support for the Products.

5.9 Service Support. Subject to the terms of the Distributor's customer service arrangements, the Distributor shall provide service support for the Products it purchases pursuant to this Agreement, including but not limited to providing qualified personnel to receive end-user inquiries and to conduct field maintenance.

Section 5.10 describes the procedure for rejecting Products. The first insert establishes the rejection period, the number of days following receipt (the number entered in the brackets) after which the Distributor can no longer reject the Product. The second insert sets the number of days after notification of a rejection that [Company] must provide an (Material Return Authorization) MRA. The third insert sets the deadline (number of days after receiving the MRA) for returning the Products to [Company]. The last insert is the number of days [Company] has to repair or replace the rejected goods after receipt.

5.10 Rejection of Products. The Distributor shall inspect all Products promptly upon receipt, and may reject any Product that fails in any material way to meet the specifications set forth in [Company]'s current brochure for that Product. Any Product not properly rejected within [xx] days of receipt of that Product by the Distributor (the "Rejection Period") shall be deemed accepted. To reject a Product, the Distributor shall, within the Rejection Period, notify [Company] in writing or by telex of its rejection and request a Material Return Authorization ("MRA") number. [Company] shall provide the MRA number in writing or by telex to the Distributor within [xx] days of receipt of the request. Within [xx] days of receipt of the MRA number, the Distributor shall return to [Company] the rejected Product, freight prepaid, in its original shipping carton with the MRA number displayed on the outside of the carton. Provided that [Company] has complied with its obligations in this Subsection 5.10, [Company] reserves the right to refuse to accept any rejected Products that do not bear an MRA number on the outside of the carton. As promptly as possible but no later than [xx] working days after receipt by [Company] of properly rejected Products, [Company] shall, at its option and expense, either repair or replace the Products. [Company] shall pay the shipping charges back to the Distributor for properly rejected Products; otherwise, the Distributor shall be responsible for the shipping charges.

For Products returned after the rejection period, [Company] may charge a restocking fee equal to the percentage (entered in the brackets) of the Distributor's purchase price for that Product.

5.11 Return of Products after Rejection Period. After the Rejection Period, the Distributor may return a product to [Company] for any reason without [Company]'s prior written consent. For any such Product, [Company] may charge the Distributor a restocking fee equal to [x]% of the Distributor's Purchase Price for that Product and shall credit the balance of the Purchase Price to the Distributor's account.

5.12 Import & Export Requirements. The Distributor shall, at its own expense, pay all import and

export licenses and permits, pay customs charges and duty fees, and take all other actions required to accomplish the export and import of the Products purchased by the Distributor. The Distributor understands that the Products may be subject to regulation by agencies of the United States government, including United States export controls that prohibit export or diversion of certain technical Products to certain unauthorized countries or for certain unauthorized uses. The Distributor warrants that it will comply in all respects with the export and re-export restrictions set forth in the export license for every Product shipped to the Distributor. [Company] will take all steps necessary to obtain such licenses.

- The following section establishes [Company]'s responsibilities. Obviously, since your distribution arrangement is unique, you might want to add additional obligations or remove other obligations on [Company].

6. Supplier's Rights & Responsibilities

- Following are two Section 6.1's. Choose the one that fits your needs.
- Assuming [Company] will be providing manual(s) to the Distributor, you should use the first Section 6.1. If [Company] will not be providing a manual you should select the second one.
- For the first insert in the first Section 6.1, indicate how soon after this Agreement is signed that the Distributor will be required to provide these manuals. For the second insert, you should try to explain what the manuals will be documenting.

6.1 Service Manual(s). Within [xx] days of execution of this Agreement, [Company] shall provide the Distributor with manuals documenting the [appropriate method(s) of servicing / installing / using the products].

- -- OR –

6.1 Service Manual(s). [Company] will not provide any manual(s) regarding the products to the Distributor.

- Following, are two Section 6.2's. Choose the one that fits your needs.
- If [Company] will be providing any training to the Distributor, that training should be described below. Therefore, choose the first Section 6.2. If there will be no training, you should select the second Section 6.2.

6.2 Training. During the Term of this Agreement and within [xx] days of any request by the Distributor, [Company] shall train a total of [xx] of [Company]'s employees for a maximum of [xx] hours / days free of charge at its facilities or at the Distributor's facilities, as the [Supplier / Distributor] shall select. The Distributor shall bear all out of pocket costs incurred by the employees during the course of the training, including, but not limited to the cost of travel, meals and lodging expenses. In addition, the Distributor will bear any reasonable expenses for travel, meals and lodging of [Company]'s instructors if classes are held at [Company]'s facilities.

- -- OR –

6.2 Training. The Distributor will not provide training to [Company] or its customers.

- Following, are two Section 6.3's. Choose the one that fits your needs.
- If there is any installation involved with the products, you should use the first Section 6.3. In the first insert, indicate how many installations the Distributor will help with free of charge. If there will be no installation services provided, select the second Section 6.3.

6.3 Installation. [Company] shall assist and support the Distributor's employees in installing the products at the initial installation site for each of the first [xx] customer sites at no charge. Thereafter, [Company] shall provide the support and consultation for additional installation at reasonable and customary charges for such services.

-- OR --

6.3 Installation. [Company] shall not be obligated to provide either the Distributor or its customer(s) with any installation support.

Section 6.4 requires [Company] to cooperate with the Distributor in the event that the Distributor makes any improvements to the products.

6.4 Implementation of Enhancements. [Company] shall cooperate with the Distributor in evaluating, reviewing, and aggressively implementing mutually approved enhancements and refinements to the products.

Following are two Section 6.5's. Choose the one that fits your needs.

The first Section 6.5 deals with technical support provided by [Company] directly to the Distributor. If technical support will be provided, define the scope of that support. The bracketed items are to help you define the parameters of the support. The second Section 6.5 should be used if no support will be given.

6.5 Technical Support. [Company] shall provide the following technical support during its' normal business hours: [(1) engineering support at no charge to the Distributor's engineering personnel in the form of telephone consultation and (2) field support at no charge to the Distributor's field engineering personnel in the form of telephone consultation.]

-- OR –

6.5 Technical Support. [Company] shall not provide any technical support to the Distributor.

Following are two Section 6.6's. Choose the one that fits your needs.

Assuming [Company] will be providing system documentation to the Distributor, you should include the following Section 6.2. This section not only describes the documentation and designates the number to be provided, but it allows the Distributor to reproduce and translate them. If [Company] will not be providing any system documentation, you should select the second Section 6.6.

For the first insert, in the first Section 6.6, indicate the number of copies of the documents [Company] will be providing. For the second insert, you should try to explain what the manuals will be documenting. The third insert designates the period of time, if any, following the expiration of this Agreement that [Company] will be required to provide system documentation.

6.6 System Documentation. [Company] shall provide at no charge to the Distributor [xx] copies of each [technical publication / document, including without limitation service and installation manuals that [Company] prepares or uses for the products] during the Term of this Agreement and for [xx] years thereafter. The Distributor may use and / or reproduce and / or translate such materials, in whole or in part, but shall reproduce and include any copyright and proprietary notice of the Distributor on all copies of such materials.

-- OR --

6.6 System Documentation. [Company] shall provide no system documentation to the Distributor.

Section 6.7 requires [Company] to provide spare parts to the Distributor at its lowest resale price, or it must find an alternative supply.

For the first insert in Section 6.7, state the period following the expiration date of this Agreement during which [Company] will be required to continue supplying the Distributor spare parts. For the second insert describe what the parts will be used for.

6.7 Spare Parts. [Company] shall, during the Term of this Agreement and for [xx] years thereafter, supply to the Distributor at its most buyer-favorable then-prevailing resale price, or develop a competitively-priced alternative source of supply for [x] (the use / operation of the products).

Section 6.8 gives [Company] sole control over what products are made as well as the content of those products. Basically, pursuant to this section the Distributor has no say in these matters.

6.8 Supplier Determination of Product Content. [Company] reserves the right at any time without liability or prior notice to

(1) determine the contents of each product, including its specifications, features, and functions, as well as any documentation or related materials;

(2) discontinue distribution of any or all products in some or all markets or through some or all channels of distribution;

(3) change or terminate any of the specifications, features, or functions of the products; or

(4) change or terminate the level or type of support or service that [Company] makes available for each product.

Any change or discontinuance of a product shall be indicated by an addition to our deletion from [Company]'s "United States Suggested Price List." The Distributor may cancel any orders for discontinued products without liability.

7. Purchase Orders

Section 7 describes the parties' obligations with respect to purchase orders.

Section 7.1 sets the exact amount and terms for the initial order.

For the first insert in Section 7, state the quantity and description of the products comprising the initial order. For the second through tenth inserts, state the delivery schedule. We have broken the initial order into three separate deliveries, you can increase or decrease this number. For each, enter the number to be delivered and the month and year that the delivery is to be completed. You should complete Exhibit F which is a copy of the purchase order for the initial order, and attach it to the end of this Agreement. The last two inserts give the Distributor the option of increasing the initial order. If you elect to keep this option, the first insert simply describes the product(s), and the second insert sets the number it can be increased to. If you don't want this option, delete the sentence.

7.1 Initial Order. The Distributor hereby places, effective upon execution of this Agreement, an order for [Enter quantity] delivery as follows:

- [Enter schedule] to be delivered in [Month, Day, Year];
- [Enter schedule] to be delivered in [Month, Day, Year]; and
- [Enter schedule] to be delivered in [(Month, Day, Year] (the "Initial Order").

Attached to this Agreement as Exhibit F is a copy of the purchase order for the Initial Order. The Initial Order shall be non-cancelable except as set forth in Sections 7.3 and 13.3 below. The Distributor has the option of increasing the number of [x] (Enter description) subject to the Initial Order to [xx] (the "subsequent orders").

All orders following the initial order are referred to as Subsequent orders.

For the first insert, indicate how many days after an verbal or telex order is sent that a written confirmation must be mailed in order for the order to be binding. In the second insert, indicate the number of days [Company] has to notify the Distributor regarding acceptance or rejection of an order after its receipt.

7.2 Subsequent Orders & Acceptance. All orders for Products submitted by the Distributor shall be initiated by written purchase orders sent to [Company] requesting a specific delivery date; provided, however, that an order may initially be placed orally or by telex if a confirming written purchase order is sent to Supplier within [xx] days after said verbal or telex order. No order shall be binding upon

[Company] until accepted by [Company] in writing. [Company] shall use its reasonable best efforts to notify the Distributor of the acceptance or rejection of an order and of the assigned delivery date for accepted orders within [xx] days of receipt of the purchase order. No partial shipment of an order shall constitute the acceptance of the entire order, absent the written acceptance of such entire order. [Company] shall use its reasonable best efforts to deliver the Products at the times specified either in its quotation or in its written acceptance of the Distributor's purchase Orders.

- Unless otherwise agreed to in writing, this Agreement controls all of the terms and conditions of any sales between [Company] and the Distributor, not purchase orders or other documents.

7.3 Controlling Terms. The terms and conditions of this Agreement and of the applicable Supplier, confirmation shall apply to each order accepted or shipped by [Company] under this Agreement. Any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgment, or confirmation that are different from or in addition to those required under this Agreement shall not be binding on the parties, even if signed and returned, unless both parties expressly agree in a separate writing to be bound by such separate or additional terms and conditions.

- Section 7.4 describes what happens when an order is canceled and states situations where orders will be automatically canceled.

7.4 Cancellation of Orders

- In the unlikely event that a lawsuit is filed and [Company] is no longer allowed to supply the products, [Company] agrees to try to replace the products or refund the Distributor if it cannot obtain permission for the Distributor to continue distribution of those products.

7.4.1 Any order under this Agreement, including, without limitation, the Initial Order set forth in Section 7.1 shall be cancelable by the Distributor upon an adverse ruling in the form of a restraining order, injunction or other remedy issued by any court of competent jurisdiction preventing or restraining [Company] from selling, or the Distributor from reselling, the products. In the event of such an adverse court ruling [Company] shall, at its own expense, immediately

(1) procure for the Distributor the right to continue the use, sale or resale of such products purchased under this Agreement, or

(2) having failed to obtain such right, replace or modify such products in order that the Distributor may continue to use, sell or resell such products, or

(3) having failed to replace or modify such products, refund to the Distributor the purchase price of all unsold products.

If [Company] elects to replace or modify any of the products, such replacement or modification shall substantially meet the respective performance and interface specifications of the replaced or modified products.

- Following are two Section 7.4.2's. Choose the one that first your needs.
- You have two options with regard to the Distributor cancellation. The first option is more favorable to [Company]; the second option allows the Distributor more leeway in canceling its orders.
- The Distributor cannot cancel the initial order, but it can cancel subsequent orders up to the first period (entered in the brackets) before the scheduled delivery date. If he cancels between the second and third number of days before the scheduled delivery date, the cancellation charge equal to the amount entered in the fourth set of brackets will be charged. There is no charge for cancellations made more than the number of days entered in the fifth set of brackets.

7.4.2 In addition to the rights set forth in Section 7.4.1, the Distributor may cancel any order except the Initial Order at any time prior to [xx] days in advance of a scheduled delivery date, subject to the cancellation charges set forth below. If the Distributor cancels deliveries scheduled between [xx] and [xx]

days from the date of cancellation, a cancellation charge of [x]% of the purchase price of those deliveries will immediately be due and payable to [Company]. Cancellations of deliveries scheduled more than [xx] days from the date of cancellation may be effected without charge. Despite the foregoing, the Distributor shall not incur any cancellation charges in the event it cancels any order pursuant to Section 7.4.1.

-- OR --

7.4.2. Once an order has been accepted by [Company], it may not be canceled by the Distributor unless (1) [Company] has failed to ship the order, or any portion thereof, within [xx] days of the date of [Company]'s confirmation of such order; and (2) the Distributor provides written notice of such cancellation, and [Company] acknowledges such cancellation in writing; and (3) [Company] has not yet shipped the order or portion thereof that the Distributor desires to cancel.

Under certain circumstances, [Company] can cancel orders even after it has accepted them.

7.5 Supplier Cancellation. [Company] reserves the right to cancel or suspend any orders placed by the Distributor and accepted by [Company], or refuse or delay shipment thereof, if the Distributor fails

(1) to make any payment as provided in this Agreement or in any invoice;

(2) to meet credit or financial requirements established by [Company]; or

(3) otherwise to comply with the terms and conditions of this Agreement.

With proper notice, deliveries can be rescheduled at no charge.

For the first insert in Section 7.6, enter the minimum number of days notice required to reschedule a delivery. For the second insert, set the maximum period for postponing a delivery.

7.6 Rescheduling of Delivery. At no charge, the Distributor may at any time with at least [xx] days prior written notice to [Company], reschedule and postpone for up to [xx] days the delivery of any products.

[Company] must get the Distributor's approval before making a partial shipment.

7.7 Partial Shipments. No Partial shipments shall be made without the Distributor's prior written approval.

[Company] pays freight charges up front and invoices the Distributor for any amounts due. So long as the Distributor provides tax exemption certificates or licenses to [Company], he does not have to pay taxes to [Company].

If the Distributor wants to designate a shipping company and / or wants specific insurance coverage, he should do so in writing for at least the amount of time prior to the scheduled shipment date (enter the amount of time in the brackets). If the Distributor says nothing, [Company] will do so on its own.

7.8 Freight & Tax Charges. [Company] shall pay initially the cost of freight and any taxes, levies, duties or fees of any kind, nature or description whatsoever applicable to the sale of any products by [Company] to the Distributor, and the Distributor shall forthwith reimburse [Company] for all such sums upon invoice, exclusive of taxes based on [Company]'s net income. The Distributor shall not be required to pay taxes for which it provides [Company], by the time of the submission of its purchase order to [Company], tax exemption certificates or licenses acceptable to the appropriate taxing authorities. In connection with the delivery of the products, the Distributor may designate in writing, not less than [xx] business days prior to the shipment date, the carrier for shipment and the amount of insurance and nature of coverage. If the Distributor fails to so designate any or all such items, [Company], at its discretion, may specify any item not so designated.

Depending on the nature of the product(s), you may wish to use an acceptance test. If [Company] will formulate an acceptance test for the products, leave this section in place. Otherwise, you can

delete it. If a product is properly rejected, the Distributor must give notice of that rejection to [Company] and will not have to pay for that product(s).

7.9 Acceptance Tests. The Distributor shall formulate, subject to [Company]'s approval, Acceptance Test Procedures. The Distributor has the right to conduct acceptance tests on any of the products and may reject those that fail to pass that test. Such rejection shall be evidenced by notice of rejection to [Company], together with an indication of the basis for that rejection. The Distributor shall have no obligations with respect to any products properly rejected by it pursuant to this Agreement.

You should state the payment terms below. Be as specific as possible.

7.10 Payment Terms. [Distributor shall pay [x]% of the purchase price with the placement of any order, and shall pay any invoices rendered to it in connection with the sale of any products to [Company] within [xx] days of its receipt.]

[Company] will provide the Distributor with the products in he Supplier's packaging, so that he Distributor doesn't have to handle the products directly.

7.11 Packaging. [Company] agrees to provide appropriate packaging, and similar matters as requested by the Distributor in order to permit the products to be shipped directly into the Distributor's distribution system without reopening the boxes or otherwise re-handling the finished goods.

If you want [Company] to ship directly, leave Section 7.12 in place.

Enter the period prior to shipment that the Distributor must supply [Company] with shipping instructions.

7.12 Direct Shipping. The Distributor may request that [Company] ship directly to any location designated by the Distributor. [Company] agrees to comply with these requests at no additional charge (other than transportation charges) provided that the Distributor furnishes [Company] with shipping instructions at least [xx] days prior to shipment.

Section 7.13 provides an alternative shipping destination that the Distributor can designate. Such shipments are treated pretty much the same as shipments directly to the Distributor in that the Distributor has to reimburse [Company] for insurance and transpiration charges.

7.13 Warehousing. The Distributor may request that [Company] ship to its own warehouse, or to another warehouse owned by a third party. In this event, [Company]'s shipment will constitute delivery to the Distributor. [Company] shall procure insurance on behalf of the Distributor to cover risk of damage or loss to these shipments while in the warehouse awaiting final delivery to the customers. The Distributor shall reimburse [Company] for all insurance premiums and transportation charges incurred by [Company] in the warehousing of these shipments. [Company] shall arrange for final shipment to the customers designated by the Distributor at the Distributor's instruction. Final shipment shall be made in full conformity with Section 7.6, except that [Company] shall also arrange for insurance coverage of these final shipments, the cost of which will be reimbursed by the Distributor.

8. Prices, Discounts & Payments

Section 8 sets the prices to be charged the Distributor for the initial order and all subsequent orders. Most of the sections are not commented on as they are fairly straightforward.

8.1 Suggested List Prices. A copy of [Company]'s current suggested list price schedule for the products is set forth in Exhibit E (attached to the end of this Agreement). [Company] may change the suggested list prices of any products at any time.

8.2 Prices. All prices are F.O.B Supplier's plant currently located at the address listed for [Company] at the beginning of this Agreement

Section 8.3 is the price for the initial order. For the first insert, enter the discount off the list price, and for the second insert give the total price for the initial order.

8.3 Supplier Prices to Distributor for the Initial Order. [Company] shall sell each product in the Initial Order to the Distributor at a [x]% discount off the list price. The aggregate purchase price for the initial order is $[x].

Section 8.4 sets the discount off the list price for all subsequent orders. Insert the discount to be applied to those orders.

8.4 Supplier Prices to Distributor for Subsequent Orders. [Company] shall sell each product in subsequent orders to the Distributor at a [x]% discount off the list price.

8.5 Taxes. The Distributor's Purchase Price does not include any federal, state or local taxes that may be applicable to the Products (excluding taxes based upon the income of [Company]), when [Company] has the legal obligation to collect such taxes, the appropriate amount shall be added to the Distributor's invoice and paid by the Distributor unless the Distributor provides [Company] with a valid tax exemption certificate authorized by the appropriate taxing authority.

Indicate when the payment is due. The number of days following the invoice (enter amount in the brackets).

8.6 Payment. Full payment of the Distributor's Purchase Price for the Products (including any freight, taxes or other applicable costs initially paid by [Company] but to be borne by the Distributor) shall be made by the Distributor to [Company] with [xx] days of shipment, and payment shall be made by wire transfer, check or other instrument approved by [Company]. Payment shall be in United States dollars and shall be in an amount equal to the Distributor's Purchase Price for the Products plus all applicable taxes, shipping charges, and other charges to be borne by the Distributor. All exchange, interest, banking, collection, and other charges shall be at the Distributor's expense. The Distributor shall pay all of [Company]'s costs and expenses (including reasonable attorneys' fees) to enforce and preserve [Company]'s rights.

Insert the monthly interest rate to be applied to delinquent amounts owed by the Distributor.

8.7 Interest. Interest shall accrue on any delinquent amounts owed by the Distributor for the products at the rate of [x]% percent per month, or the maximum rate permitted by applicable law, whichever is less.

Section 8.8 is a guarantee of the Distributor's financial condition. It is assuring [Company] of its ability to pay for the amount of products on an annual basis (enter amount in the brackets).

8.8 Distributor Financial Condition. The Distributor represents and warrants that it is and at all times during the term of this Agreement shall remain in good financial condition, solvent and able to pay its bills when due. The Distributor further represents and warrants that it has and at all times during the term of this Agreement shall retain the ability to order and pay for a minimum of $[x] in total annual orders for products. The Distributor shall maintain and employ in connection with the Distributor's business under this Agreement such working capital and net worth as may be required in the reasonable opinion of [Company] to enable the Distributor to carry out and perform all of the Distributor's obligations and responsibilities under this Agreement. From time to time, on reasonable notice by [Company], the Distributor shall furnish financial reports as necessary to determine the Distributor's financial condition. [Company] shall have the right to change its financial requirements at any time.

8.9 Distributor Pricing. The Distributor is free to determine its own resale prices for the products. Although [Company] may publish suggested list prices, these are suggestions only and are not binding in any way.

8.10 Dealer Pricing. The Distributor shall inform each Dealer that it is free to determine its own retail

prices and that, although [Company] may publish suggested retail price lists, they are suggestions only and are not binding in any way.

9. Shipment, Risk of Loss & Delivery

- Section 9 addresses the issue of who bears the risk of loss and who owns the modifications made to the products along with a number of matters related to shipping. Again, numerous sections are without comments as they are self-explanatory.
- Following are two Section 9.1's. Choose the one that fits your needs.
- Choose the first Section 9.1 if you want [Company] to bear the risk of loss for the products, (until they are actually delivered to the Distributor). Choose the second Section 9.1 if you want the Distributor to assume that risk.

9.1 Risk of Loss. Except as provided below, title to the products purchased pursuant to this Agreement will pass upon delivery to the Distributor. [Company] assumes the risk of loss and damage of the products in transit from [Company]'s shipping point to the point of destination.

- -- OR --

9.1 Risk of Loss. Except as provided below, title to the products purchased under this Agreement will pass upon shipment to the Distributor. The Distributor assumes the risk of loss and damage of the products in transit from [Company]'s shipping point.

- Section 9.2 not only permits the Distributor to make changes to the products, but it also states the Distributor owns the rights to those changes. You should change this if you want [Company] to have greater rights with respect to modifications.

9.2 Modifications. The Distributor shall have the right to modify any of the products, and may combine such with other products or material to form derivative works. All rights in improvements made by the Distributor shall be held exclusively by the Distributor; [Company] may not use, reproduce or distribute the Distributor's improvements in any manner except as otherwise expressly provided under this Agreement.

- The Distributor pays all shipping and associated costs.

9.3 Shipment. All Products delivered pursuant to the terms of this Agreement shall be suitably packed for air freight shipment in [Company]'s standard shipping cartons, marked for shipment at the Distributor's address stated above, and delivered to the Distributor or its carrier agent F.O.B. Supplier's manufacturing plant, at that time (subject to Subsection 9.6 below) title to such Products and risk of loss shall pass to the Distributor. Unless otherwise instructed in writing by the Distributor, [Company] shall select the carrier. All freight, insurance, and other shipping expenses, as well as any special packing expense, shall be paid by the Distributor. The Distributor shall also bear all applicable taxes, duties, and similar charges that may be assessed against the Products after delivery to the carrier at [Company]'s plant.

- It is okay for [Company] to make partial shipments to be paid for separately.

9.4 Partial Delivery. Unless the Distributor clearly advises [Company] to the contrary in writing, [Company] may make partial shipments of the Distributor's orders, to be separately invoiced and paid for when due. Delay in delivery of any installment shall not relieve the Distributor of its obligation to accept the remaining deliveries, unless canceled pursuant to Section 7.3 of this Agreement.

9.5 Delivery Schedule & Delays. [Company] shall use reasonable efforts to meet the Distributor's requested delivery schedules for the products. Should orders for products exceed [Company]'s available inventory, [Company] will allocate its available inventory and make deliveries on a basis [Company] deems equitable, in its sole discretion, and without liability to the Distributor on account of the method of

allocation chosen or its implementation.

Until the Distributor pays for a Product, [Company] retains the title. It is the Distributor's duty to keep those Products separate from others and to maintain adequate insurance.

9.6 Reservation of Title. Transfer of title for each Product shipped to the Distributor shall be subject to full payment of the Purchase Price. Until such full payment, the Product shall remain the property of [Company]. For all Products to which [Company] retains title, the Distributor shall (1) carry full insurance on the Products throughout the time they are in the Distributor's possession and (2) segregate those Products from other Products in the Distributor's inventory. The Distributor agrees to take all such steps as are necessary to assist [Company] in so retaining title, including the signing of any filings necessary pursuant to local law.

Section 10 details the limited warranty being provided by [Company].

10. Limited Warranty

This is a general warranty provision that the Distributor agrees to pass on to its dealers / customers; it basically warrants that the products are not defective and provides recourse in the event that they are. You may want to replace [Company] with your company's name to avoid any confusion.

[Company] agrees to replace defective products at its manufacturing facility so long as the end-user returns the product postage prepaid. You may wish to change this.

We have set the duration of the warranty at one year after the product is shipped to the end-user or eighteen months after shipment from [Company] to the Distributor, whichever comes first. You may wish to modify these periods.

10.1 Warranty to Distributor's Customers. The standard limited warranty. The Distributor shall pass on to its Customers [Company]'s standard limited warranty for the products, as follows:

One-Year Limited Warranty
For one year after the date of shipment to End-user or eighteen months after the date of shipment from [Company], whichever first occurs, [Company] will at its sole discretion, replace, repair or furnish credit for any product purchased by End-user that, in [Company]'s judgment, has a defect in material or workmanship provided the product is returned, transportation charges prepaid, to [Company] with [Company]'s prior permission and return authorization number, and provided further that the product has not been misused (including electrostatic discharge), improperly operated, or subject to unauthorized repairs or modifications. This warranty is in lieu of all other warranties, expressed, implied or statutory, including the warranty of merchantability and the warranty of fitness or of suitability for a particular purpose and of all other obligations or liabilities on [Company]'s part, and [Company] neither assumes nor authorizes any other person to assume for [Company] any other liabilities in connection with the sale of the said product. If [Company]'s examination does not disclose a defect in material or workmanship on a product claimed to be defective. The End-user agrees to pay [Company]'s established charges for unpacking, testing, and repackaging the product for reshipment to the End-user. This provision states the End-user's exclusive and sole remedy for breach of warranty. This provision does not extend the original warranty period of any product that has been repaired or replaced by [Company].

This warranty is the only warranty made by [Company] with respect to the goods delivered under this Agreement, and may be modified or amended only by a written instrument signed by a corporate officer of [Company] and accepted by the End-user.

The products that at the End-user's request are delivered without complete encapsulation are specifically excluded from the warranty set out in this Agreement. All such products are sold "as is."

10.2 Disclaimer, No Other Warranty. Except for the express warranty set forth above, [Company]

grants no other warranties, express of implied, by statute or otherwise, regarding the products, their fitness for any purpose, their quality their merchantability, or otherwise.

10.3 Limitation of Liability. [Company]'s liability under the warranty shall be limited to replacement, repair or credit for the customer's purchase price. In no event shall [Company] be liable for the cost of procurement of substitute goods by the customer or for any special, consequential or incidental damages for breach of warranty.

Indicate how long the repairs and warranties are for.

10.4 Repairs are warranted for [xx] days.

10.5 Distributor Duties. The Distributor agrees to honor all replacement requests received from the Dealers or End-Users pursuant to the terms of the End-User Agreement pertaining to the defective units. The Distributor shall instruct all the Dealers to submit all replacement requests to the Distributor.

You may or may not want to include the following section that provides additional protection for the period of time within the number of months entered in the first bracket. The percentage of products have the same problem, so you would enter the percent in the second set of brackets. For the third insert, indicate how soon after the discovery of the problem the Distributor is required to give notice to [Company], and for the final insert indicate how long the Distributor must keep the product before disposing of it.

10.6 Additional Protection. If, within any [xx]-month period, [x]% percent or more of the products, while within the warranty period specified in this Agreement, exhibit defects of the same kind and nature, and such defects are the result of faulty design or workmanship on the part of [Company] or defects in materials arising from any cause for which [Company] is responsible, then [Company] agrees to give compensation, or render assistance, at [Company]'s sole expense, to the Distributor as specified: (1) Delivery of replacement products found to be defective to the place designated by the Distributor; (2) Field service for the replacement of such defective products or reimbursement to the Distributor of the Distributor's labor costs in replacing such defective products at such rates as may be mutually agreed upon from time to time; and (3) Redesign or reprogramming of the products to the extent necessary to cure such defects. The warranty provided in this section shall be subject to the Distributor's satisfaction of the following conditions: (1) the particulars concerning the failure of the products alleged or found to be defective shall be furnished to [Company] in writing within [xx] weeks of discovery by the Distributor of such defect; (2) the defects so particularized shall be subject to [Company]'s verification; (3) no products alleged or found to be defective shall be disposed of by the Distributor for at least [xx] weeks after [Company] receives the written particulars concerning such defects; and (4) such defective products shall forthwith be returned to [Company] by the Distributor, freight payable at destination, if [Company] so requests.

The Distributor must give [Company] a written report of claims once every (designated in brackets) number of months.

10.7 Notice Requirements. The Distributor shall provide [Company] a written report of all warranty claims at least once every [xx] months.

10.8 Non-Exclusive Remedy. The remedy stated in this Section 10 constitutes the sole and exclusive remedy of the Distributor and, insofar as the End-User Agreement effectively so provides, any Dealer or End-User, as well as their successors and assigns, for any defect or nonconformity in the products.

10.9 Product Liability

10.9.1 Indemnification. [Company] shall indemnify and hold harmless the Distributor for damages or expenses resulting from any claim, suit or proceeding brought against the Distributor on the issue of product liability. The Distributor agrees that [Company] has the right to defend, or at its option to settle,

and [Company] agrees, at its own expense, to defend or at its option to settle, any claim, suit or proceeding brought against the Distributor or its Customer on the issue of product liability, subject to the limitations set forth in this Agreement. [Company] shall have sole control of any such action or settlement negotiations, and [Company] agrees to pay, subject to the limitations of this Agreement set forth, any final judgment entered against the Distributor or its Customer on such issue in any such suit or proceeding defended by [Company]. The Distributor agrees that [Company] at its sole option shall be relieved of the foregoing obligations unless the Distributor or its Customer notifies [Company] promptly in writing of such claim, suit or proceeding and gives [Company] authority to proceed as contemplated herein, and, at [Company]'s expense, gives [Company] proper and full information and assistance to settle and / or defend any such claim, suit or proceeding.

10.9.2 Entire Liability. The foregoing provisions of this Section 10.9 state the entire liability and obligations of [Company] and the exclusive remedy of the Distributor and its Customers, with respect to any alleged product liability suit related to the products or any part thereof.

Section 11 deals with warranties by Supplier to Distributor that it has the right to manufacture and / or sell the products to Distributor and if it turns out that it doesn't, Supplier agrees to indemnify or reimburse Distributor for any resulting damages.

11. Ownership Warran & Indemnification

[Company] warrants that he has the right to supply the products to the Distributor.

11.1 Supplier Ownership Warranty. [Company] represents and warrants to the Distributor that:

(1) the products are the originals with [Company];

(2) the products do not infringe upon any patent, Copyright, trade secret or other proprietary rights of others;

(3) [Company] has full power and authority to grant the rights granted within this Agreement to the Distributor; and

(4) [Company] has not previously or otherwise granted any other rights in the products to any third party that conflict with the rights in this Agreement granted to the Distributor.

In the event that [Company] breaches the warranty described above, [Company] will pay any and all damages and expenses resulting from that breach.

11.2 Indemnification. [Company] agrees to defend at its expense and hold the Distributor harmless from any claim, demand, or suit against the Distributor resulting from a breach of any of the warranties set forth above in Section 11.1 and to pay any costs, damages, or expenses (including attorneys' fees) arising from any such claim, demand, or suit. [Company] shall have sole control of the defense of such action and all negotiations for its compromise or settlement. The Distributor shall timely notify [Company] in writing of any such claim, demand, or suit, and, at [Company]'s request and expense, provide [Company] with all available information, assistance and authority to enable [Company] to defend the same. [Company] shall indemnify the Distributor for all such costs, damages, and expenses as they are incurred.

In addition to paying for damages from a breach of this warranty, [Company] agrees to try to obtain the right to the products so that they are no longer infringing.

11.3 Continued Use. Following notice of a claim or demand or a threatened or actual suit, [Company] shall immediately, at its own expense, procure for the Distributor the right to continue the use of the products subject to such claim, demand or suit, or, having failed to obtain such right, replace or modify such products to make them non-infringing, or, having failed to replace or modify the products, refund to the Distributor the purchase price of all unsold products. If the Distributor elects to replace or modify any

of the products, such replacement or modification shall substantially meet the performance and interface specifications of the replaced or modified products.

If the Distributor makes changes to the products, and those changes result in an infringement, then [Company] will not be liable.

11.4 Modification of the Products. [Company] shall have no liability for any claim of infringement based on the Distributor's combination of the products with products not supplied by [Company] if such claim would have been avoided by the use of the products without such specific products.

Even after this Distribution Agreement expires or is terminated, these warranties and indemnification's are still effective.

11.5 Survival of Warranties. The warranties and indemnities stated in this Section 11 shall survive the expiration or termination of this Agreement.

Section 12 limits the liability of both [Company] and the Distributor.

12. Limitation of Liability

The only warranties that [Company] is making are those stated in the two previous sections. [Company] is specifically disclaiming any other warranties, including all implied warranties of merchantability.

12.1 Limitation of Liability. The warranties contained in Sections 10 and 11 above are in lieu of all other warranties and conditions expressed or implied, including, but not limited to, those governing merchantability or fitness for a particular purpose. In the event that, despite Section 10, [Company] is found liable for damages based on any defect of nonconformity in the products, its total liability for each defective product shall not exceed the discounted price of such defective product.

Neither party will be liable for consequential or indirect damages. An example of consequential damages would be lost profits when a part failed to work, and that caused the factory to shut down.

12.2 Exclusion of Consequential Damages. In no event shall either party be liable to the other or any dealer or end-user for any indirect, special or consequential damages including, without limitation, lost profits, costs of delay, any failure of delivery or liability to third parties arising from any source even if the party had been advised of the foresee-ability of the same.

Section 13 describes situations where this Agreement can be terminated.

13. Termination

Either party can terminate the Agreement if any of the following occur.

13.1 Termination Events. This Agreement may be terminated by either party upon the occurrence of any of the following circumstances:

In the event that bankruptcy proceedings are initiated and not dismissed or stayed within the amount of time entered in the brackets.

13.1.1 Any assignment for the benefit of the creditors, or any bankruptcy, reorganization, or other proceeding under any bankruptcy or insolvency law is initiated by the other party, or is initiated against it and not dismissed or stayed within [xx] days;

Where [Company] or the Distributor is in material breach, the non-breaching party can terminate the Agreement if the breach is not cured within the period after receiving notice of the breach. Enter the period of time in the brackets.

13.1.2 A material breach by the other party of any of the terms of this Agreement, which breach is not remedied by the other party within [xx] days of the other party's receipt of notice of such breach; or

If [Company] supplies products to other Distributors in violation of this Agreement, the Distributor may terminate the Agreement. The Agreement will terminate after the number of days (entered in brackets) following the mailing of the termination notice.

13.2 Violation of Distributor's Distribution Rights. This Agreement may be terminated by the Distributor upon the sale or distribution of the products in violation of the Distributor's exclusive distribution rights as described in Section 4.1. The Written notice of termination shall be given by registered or certified mail, in which event this Agreement shall terminate [xx] days from the date of mailing of the notice.

If the Agreement is terminated, neither party is released from their financial obligations to the other. The second sentence of this section states that if the Agreement is properly terminated, neither party can sue the other for damages.

13.3 Fulfillment of Obligations. The termination of this Agreement shall not otherwise release either party from its obligation to pay any sum that may be then or thereafter owing to the other party nor operate to discharge any liability that had been incurred by either party prior to any such termination. Except as qualified by the preceding sentence, neither party shall, by reason of the termination of this Agreement, be liable to the other for any damages (whether direct, consequential or incidental to and including loss of profit or prospective profits of any kind) sustained or arising out of any such termination.

If the Distributorship is terminated, the Distributor may sell the balance of its inventories, but that's about it. With respect to the first insert, this sets the number of days after termination that an order was scheduled to be shipped. If the order goes beyond that period, [Company] may cancel. The second insert is a restocking fee that [Company] can charge to the Distributor to take back products upon termination.

13.4 Effect of Termination & Survival. Upon termination of this Agreement, the Distributor may continue to dispose of its existing inventories of products, but the Distributor shall otherwise discontinue all further promotion, marketing, and support of the products. Without limiting the generality of the foregoing, the Distributor shall cease all display, advertising, and use of all [Company] names, trademarks, logos, and designations and will not thereafter use, advertise, or display any such names, trademarks, logos, or designations. Upon termination of this Agreement, the due date of all outstanding invoices for the products shall automatically be accelerated and all such invoices shall become due and payable. All orders or portions thereof remaining unshipped as of the effective date of termination may be canceled by [Company], at its option, to the extent they call for delivery more than [xx] days after the date of termination. Upon termination of this Agreement, [Company] shall have the option, exercisable at any time in its discretion, to repurchase some or all of the entire remaining uncommitted inventory of the products held by the Distributor. [Company] shall pay the Distributor for all products so repurchased (if received in a new and re-saleable condition) an amount equal to the discounted price paid by the Distributor to [Company], less a restocking charge of [x]% percent of such price. Upon receipt of any products so reacquired from the Distributor, [Company] shall issue an appropriate credit to the Distributor's account. Despite any termination of this Agreement, the provisions in Sections 5.4 through 5.6, 7.4 through 7.9, 7.11 through 7.14, 8 through 12, and 14 through 15 shall remain in full force and effect.

This next section deals with the protection of certain proprietary information.

14. Confidential Information, Trademarks & Intellectual Property Rights

Both parties agree to keep the confidential or proprietary information confidential.

14.1 Protection of Information. Each party acknowledges that the Information is proprietary to the other party and has been developed as a trade secret at their expense. Each party agrees that it will exercise the same efforts to hold and use such Information in confidence (except as otherwise permitted

by this Agreement) as it uses to protect its own most confidential business information.

The parties acknowledge their respective right to seek an injunction regarding the disclosure of confidential information.

14.2 Right to Injunction. If any party shall attempt to use or dispose of any Information or any of its aspects or components or any duplication or modification thereof in a manner contrary to the terms of this Section, the other -party shall have the right, without the necessity of filing a bond or other security, in addition to such other remedies that may be available to it, to injunctive relief enjoining such acts or attempts, it being acknowledged that legal remedies are inadequate.

Whenever one party plans to mention the other party or this Agreement in a press release, it must obtain the written permission of the other party.

14.3 Press Releases. No press releases or other like publicity or advertising of any nature regarding this Agreement that mentions this Agreement or the other party by name shall be released by a party without the prior written Agreement of the other party.

Make sure that Section 14.4 covers your trademarks in sufficient detail as it makes clear exactly what the Distributor can and cannot do with those trademarks.

14.4 Trademarks. [Company] shall have and retain sole ownership of the Trademarks, including the goodwill pertaining thereto. Subject to the Distributor's compliance with [Company]'s standard cooperative advertising policies, [Company] hereby grants to the Distributor the right to use and display the Trademarks solely in connection with and solely to the extent reasonably necessary for the marketing, distribution, and support of the products within the Territory in accordance with the terms and conditions of this Agreement. The Distributor shall market, distribute, and support the products only under the Trademarks, and not any other trademark or logo. The Distributor shall not use the Trademarks or any other trademarks or trade names of [Company] or any word, symbol, or design confusingly similar thereto, as part of its corporate name, or as part of the name of any product of the Distributor. The Distributor shall not remove or alter the products' copyright notices, trademarks, and logs, or packaging. To protect and preserve the goodwill and image of the products, the Distributor shall

(1) conduct business in a manner that reflects favorably at all times on the products and the reputation of [Company];

(2) avoid deceptive, misleading, or unethical practices that are or might be detrimental to [Company], the products, Authorized Dealers, or the public, including any disparagement of [Company] or the products;

(3) make no false or misleading representations with regard to [Company] or the products;

(4) refrain from publishing or employing any misleading or deceptive advertising material; and

(5) refrain from making any representations, warranties, or guarantees to Authorized Dealers or to the trade with respect to the specifications, features, or capabilities of the products that are inconsistent with the literature distributed by [Company], including all warranties and disclaimers contained in such literature.

14.5 No Copying. Without the prior written consent of [Company], the Distributor shall refrain from copying, reverse engineering, disassembling, decompiling, translating, or modifying the products, or granting any other person or entity the right to do so.

14.6 Notification. The Distributor shall promptly notify [Company] of (1) any claims, allegations, or notification that its marketing, licensing, support, or service of the products may or will infringe the Intellectual Property Rights of any other person or entity; and (2) any determination, discovery, or notification that any person or entity is or may be infringing the Intellectual Property Rights of

[Company]. The Distributor shall not take any legal action relating to the protection or defense of any Intellectual Property Rights pertaining to the products without the prior written approval of [Company]. The Distributor shall assist in the protection and defense of such Intellectual Property Rights.

14.7 Patent, Copyright & Trademark Indemnity

Section 14.7 makes it [Company]'s responsibility to defend the Distributor in the event that a suit is brought claiming an infringement.

14.7.1 Indemnification. The Distributor agrees that [Company] has the right to defend, or at its option to settle, and [Company] agrees, at its own expense, to defend or at its option to settle, any claim, suit or proceeding brought against the Distributor or its Customer on the issue of infringements of any patent or copyright of the United States or a nation in the Territory by the Products sold under this Agreement or the use thereof, subject to the limitations set forth. [Company] shall have sole control of any such action or settlement negotiations, and [Company] agrees to pay, subject to the limitations set forth, any final judgment entered against the Distributor or its Customer on such issue in any such suit or proceeding defended by [Company]. The Distributor agrees that [Company] at its sole option shall be relieved of the foregoing obligations unless the Distributor or its Customer notifies [Company] promptly in writing of such claim, suit or proceeding and gives [Company] authority to proceed as contemplated herein, and, at [Company]'s expense, gives [Company] proper and full information and assistance to settle and / or defend any such claim, suit or proceeding. If the Products, or any part thereof, are, or in the opinion of [Company] may become, the subject of any claim, suit or proceeding for infringement of any patent or copyright of the United States or any nation in the Territory, or if it is adjudicated that the Products, or any part thereof, infringe any patent or copyright of the United States or any nation in the Territory or if the sale or use of the Products or any part thereof, is, as a result, enjoined, then [Company] may, at its option and expense: (1) procure for the Distributor and its Customers the right under such patent, Copyright or trademark to sell or use, as appropriate, the Products or such part; or (2) replace the Products, or part of them, with other suitable Products or parts; or (3) suitably modify the Products, or part of them; or (4) if the use of the Products, or part of them, is prevented by injunction, remove the Products, or part of them, and refund the aggregate payments paid by the Distributor, less a reasonable sum for use and damage. [Company] shall not be liable for any costs or expenses incurred without its prior written authorization.

14.7.2 Limitation. Despite the provisions of Subsection 14.7 above, [Company] assumes no liability for (1) infringements covering completed equipment or any assembly, combination, method or process that any of the Products may be used but not covering the Products standing alone; (2) trademark infringements involving any marking or branding not applied by [Company] or involving any marking or branding applied at the request of the Distributor; or (3) infringements involving the modification or servicing of the Products, or any part of them, unless such modification or servicing was done by [Company].

14.7.3 Entire Liability. The foregoing provisions of this Section 14.7 state the entire liability and obligations of [Company] and the exclusive remedy of the Distributor and its Customers, with respect to any alleged infringement of patents, copyrights, trademarks or other intellectual property rights by the Products or any part of them.

This section, often titled "Miscellaneous," lists a number of standard clauses found in most agreements.

15. General Provisions

The General Provisions that follow are fairly standard. These provision enhance the balance of the Agreement by explaining issues such as notice, assignment, legal remedies, waiver, and attorney fees.

15.1 **Independent Contractors.** The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

- Make it clear that you will not try to hire away each others employees. If you do or it happens then there is compensation built-in and you can avoid further legal proceedings.

15.2 **Non-Solicitation.** Neither party shall solicit for employment or hire the other's current or future employees, either directly or indirectly, during the Term of this Agreement, without obtaining the other's prior written approval. Should an employee change employment from one party to the other, the new employer shall pay the old employer a fee equivalent to [**Twenty Percent (20%)**] of the employee's new compensation, annualized for the first year.

- You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

15.3 **Governing Law & Jurisdiction.** This Agreement shall be governed by and construed under the laws of the State of [State], U.S.A. as applied to contracts entered into and to be performed entirely within [State], except that perfection of the title reserved by [Company] in Subsection 3.12 above shall be governed by the laws of the Distributor's jurisdiction. The federal and state courts within the State of [State], U.S.A., shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. The Distributor hereby expressly consents to (1) the personal jurisdiction of the federal and state courts within [State] and (2) service of process being effected upon it by registered mail sent to the address set forth at the beginning of this Agreement.

- This Agreement is intended to be the only Agreement, and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to is included in this Agreement. Otherwise, it is as if it was not agreed to.

15.4 **Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, that are not expressly stated in this Agreement, shall be binding on such parties.

- Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

15.5 **All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

- All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

15.6 **Notices.** Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

15.7 **Costs of Legal Action.** In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

15.8 **Inadequate Legal Remedy.** Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

15.9. **Arbitration.** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. [Company] and [Client] intend that this Agreement to arbitrate be irrevocable.

Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

15.10 **Delay is Not a Waiver.** No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

15.11 **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a "Force Majeure Event"), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.

You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.

- Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3rd party.
- However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities…
- CHOOSE one or the other of these two following paragraphs.

15.12 **Assignability & Binding Effect**. Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

- ~ OR ~ This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval.

15.12 **Non-Assignability & Binding Effect**. Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

- If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

15.13 **Severability.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

- The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

15.14 **Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative upon all other rights and remedies described in this section and allowed under applicable law.

15.15 **Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

- Every copy shall be just as valid as the original.

15.16 **Counterparts.** This Agreement may be executed in multiple counterparts, any one of which will be considered an original, but all of which will constitute one and the same instrument.

- Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

15.17 **Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

[Company]	Distributor
_____	_____
[Owner/Founder]	[Distributor Rep Name]
_____	_____
Title	Title

Exhibit A

Territory

- Worldwide
- Specific Country
- xxx

Exhibit B

Product Quota

- Xxx 200
- Xxx
- Xxx

Exhibit C

Trademarks

- Xxx
- Xxx
- Xxx

Exhibit D

Supplier Customers

- Xxx
- Xxx
- xxx

Exhibit E

Suggested List Price Schedule

Product	SRP	Distributor Cost
▪ Product A		
▪ Xxx	$000	$000
▪ Xxx	$000	$000

Exhibit F

Initial Order